

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JAN 5 1999

PATRICK FISHER
Clerk

CARROLL GREGG,

Petitioner-Appellant,

v.

H.N. SCOTT,

Respondent-Appellee.

No. 98-6049
(D.C. No. 97-CV-648)
(W.D. Okla.)

ORDER AND JUDGMENT *

Before **ANDERSON** , **KELLY** , and **LUCERO** , Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1 (G). The case is therefore ordered submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Petitioner Carroll Gregg appeals the district court's order denying his petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254. He requests issuance of a certificate of appealability pursuant to 28 U.S.C. § 2253(c). We deny the certificate and dismiss the appeal.

Petitioner was convicted in an Oklahoma state court of forty-three counts based on his sexual abuse of a young girl. The charges arose from four sexual encounters between petitioner and the victim that petitioner had videotaped. The state appellate court affirmed the convictions on all but one of the counts. See Gregg v. State, 844 P.2d 867, 879, 881 (Okla. Crim. App. 1992). He then filed his habeas petition in federal court. A magistrate judge recommended denying the petition and the district court adopted that recommendation.

On appeal, petitioner pursues the following arguments made to the state appellate court and the federal district court: (1) the prosecution charged him with many counts based on conduct that should have been charged as a single offense, in violation of the constitutional prohibition against double jeopardy; (2) the evidence that the crimes were committed within the applicable statutes of limitations was insufficient to support the convictions; (3) the state court denied him his due process rights by refusing his request to present mitigating evidence on sentencing; (4) the prosecutor's improper comments denied petitioner a fair

trial; and (5) petitioner's absences from various parts of his trial denied him his constitutional rights of due process.

Our review of the district court's conclusions of law is de novo. See Sena v. New Mexico State Prison, 109 F.3d 652, 653 (10th Cir. 1997). The underlying facts adjudicated in the state court are "presumed to be correct." 28 U.S.C. § 2254(e)(1) (1996). We have carefully reviewed the record on appeal, as well as the brief submitted by petitioner. Applying the standards of 28 U.S.C. § 2254 (d) & (e) (1996), we affirm the denial of a writ of habeas corpus for substantially the reasons stated in the district court's January 16, 1998 order.

PETITIONER'S REQUEST FOR A CERTIFICATE OF APPEALABILITY
IS DENIED. The appeal is DISMISSED.

Entered for the Court

Stephen H. Anderson
Circuit Judge